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July 26, 1985

Professor Daniel Nathans
Department of Microbiology
The Johns Hopkins University
School of Medicine
725 N. Wolfe Street
Baltimore, Maryland 21205

Dear Professor Nathans:

I write to ask for your cooperation in a study of the interaction of legal rules with the norms of science in areas of research related to what has come to be known as "biotechnology".

I am currently engaged in a study of the impact of legal rules concerning proprietary rights in biological materials (such as cell lines and bacterial strains) on the behavior of research scientists. From a lawyer's perspective, this is a particularly interesting area to study for a number of reasons. First, the rapid rate of commercialization of new scientific discoveries in biotechnology-related areas has intensified the awareness among research scientists of legal and commercial rights arising out of their work. Second, there is no sharp dividing line between basic and applied research in these fields. Noteworthy scientific discoveries are being made by scientists working in industrial laboratories, and patentable inventions are being made in university laboratories. Thus scientists working in these areas are more likely than scientists in other fields to be concerned simultaneously with both the norms and rewards of research science and also the rules and incentives created by the law of intellectual property. Third, the applicable legal rules are still relatively inchoate and tentative, and thus are potentially amenable to being structured in a way that accommodates the needs of the research science community as well as the interests of the institutions that sponsor the research.

The reason I am contacting you in particular is that a few years ago you participated in an ad hoc committee to consider whether the Journal of Biological Chemistry should modify its editorial policy which had theretofore required authors to make available to the scientific community "microorganisms and tissue culture strains referred to" in manuscripts accepted for publication. The occasion for reconsidering the policy was that the JBC had received an article by scientists at a private company describing the transformation of an E. coli strain with a recombinant plasmid containing a DNA sequence that had been synthesized by the authors. The authors indicated that their

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company's policy prevented them from making the transformed strain available to other scientists. The company's policy, in other words, was directly in conflict with the JBC's policy. At that time you set forth your views on the JBC's policy in a letter to Dr. William Harrington. I enclose a copy of that letter.

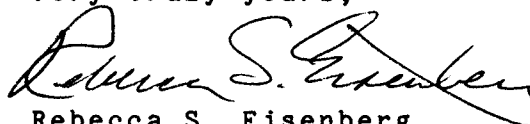
I would now like to use your letter, along with the letters of the other committee members, to illustrate the range of views within the scientific community as to the state of the norms of science at a time when those norms appeared to be in conflict with the interests of commercial firms seeking to preserve their legal rights. Taken together, the letters are a cogent and articulate statement of what the relevant norms are, what interests of the scientific community are served by the norms, and what mechanisms are available within the community for advancing those interests and for enforcing and preserving the community's norms. I aim to compare this composite picture from the scientific community with the operation and underlying purposes of the law of intellectual property. My purpose is to see whether proprietary rights in biological materials can be structured in a way that adequately protects the commercial interests and incentives of institutions sponsoring research while minimizing damage to the mechanisms of the scientific community for effectively communicating, testing and building upon new knowledge.

I have spoken about this project with the current editors of the JBC. They have no objection to my use of the letters, but we agreed that it would be best to contact each member of the committee individually to give you the opportunity to raise any concerns you might have. Specifically, I would like to set forth the views expressed in your letter, preferably in your own words, in an article for publication. Ideally, in the interests of full disclosure, I would like to feel free to attribute your remarks to you by name. If, however, you prefer to remain anonymous, I will respect that preference. The most important thing from my point of view is that I be able to describe the full range of views reflected in the letters of all the committee members.

I will call you next week to talk about this further. If you would like to get in touch with me sooner than that, my office phone number is (313) 763-1372 and my home phone number is (313) 995-9654.

Thank you for your time and help in this matter.

Very truly yours,



Rebecca S. Eisenberg
Assistant Professor of Law

RSE:sgk

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cc: Mr. Charles Hancock
Executive Officer
Journal of Biological Chemistry

Aug 13, 1985
via phone I agreed to use of ^{my} letter described
above & said my views can be attributed to me.